

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

ADAM LOWTHER and JESSICA LOWTHER
on behalf of themselves and as next friends
to their minor children, W.L and A.L.,

Plaintiffs,

vs.

Case No. 1:18-cv-00868-KWR-JFR

CHILDREN YOUTH AND FAMILIES DEPARTMENT,
BERNALILLO COUNTY SHERIFF'S DEPARTMENT,
MARIA MORALES, in her personal capacity acting under
color of state law, JACOB WOOTTON, in his personal
capacity acting under color of state law, CATHERINE SMALLS,
in her personal capacity acting under color of state law,
BRIAN THORNTON, in his personal capacity acting under color
of state law, and MARTIN LOZANO, in his personal capacity
acting under color of state law,

Defendants.

MEMORANDUM OPINION AND ORDER
GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

THIS MATTER comes before the Court upon Defendants CYFD, Maria Morales and Andrea Miles' Motion for Partial Summary Judgment based on grounds of Eleventh Amendment Immunity and qualified immunity, filed on May 13, 2021 (**Doc. 241**). Having reviewed the parties' pleadings and the applicable law, the Court finds that Defendants' motion is well-taken and, therefore, is **GRANTED in part and DENIED as moot in part**.

BACKGROUND

This case arises from an investigation of alleged child abuse at Plaintiffs' home. Plaintiffs allege that Defendants violated their First, Fourth, and Fourteenth Amendment rights, and the New Mexico Tort Claims Act, by *inter alia*, unlawfully arresting or detaining Dr. Adam Lowther (Dr.

Lowther); entering the Lowther residence without a warrant; detaining Jessica Lowther (Mrs. Lowther); and removing the Lowther children (A.L. and W.L.).

Plaintiffs filed this case under 42 U.S.C. § 1983 and the New Mexico Tort Claims Act, alleging the following claims against the Defendants:

Count I: Fourth Amendment (Unlawful Searches and Seizures: Arrest of Dr. Lowther);

Count II: Fourth Amendment (in the alternative to Count I) (Unlawful Detention of Dr. Lowther);

Count III: Fourth Amendment (Unlawful Searches and Seizures: Detention of Mrs. Lowther);

Count IV: Fourth Amendment (Unlawful Searches and Seizures: Entry into the Lowther Home);

Count V: Fourth and Fourteenth Amendment (Seizure of the Lowther Children) (Defendants Morales and Wootton);

Count VI: Fourth and Fourteenth Amendment (Seizure of the Lowther Children) (Defendant Morales);

Count VII: Fourth and Fourteenth Amendment (Arrest, Entry, and Seizure) (Defendant BSCO);

Count VIII: Fourth and Fourteenth Amendment (Seizure of the Lowther Children) (Defendant CYFD);

Count IX: First Amendment (Retaliation against Mrs. Lowther) (Defendant Wootton);

Count X: NMTCA (Arrest and Imprisonment of Dr. Lowther) (Defendant BSCO);

Count XI: NMTCA (Arrest and Imprisonment of Mrs. Lowther) (Defendant BSCO);

Count XII: NMTCA (Arrest and Imprisonment of the Lowther children) (Defendants CYFD and BSCO);

Count XIII: NMTCA (Defamation against Dr. Lowther) (Defendant BSCO).

This Memorandum addresses Defendants' motion for summary judgment on Plaintiffs' claims under Counts IV, VI and VIII (CYFD) and Count IV (CYFD and Morales).

Plaintiffs previously submitted an unopposed motion to dismiss with prejudice Counts IV, VI and VIII as to CYFD. **Doc. 225** The Court granted Plaintiffs' unopposed motion on July 16, 2021. **Doc. 257.** Accordingly, with respect to the instant motion for summary judgment as to Counts IV, VI and VIII regarding CYFD, the motion is denied as moot.

With respect to Defendants' motion for summary judgment on the basis of qualified immunity as to Morales on Count IV, Plaintiffs "adopt the arguments concerning the unlawful warrantless entry made in their prior pleadings." **Doc. 256 at 3 fn 1.** In their response brief, Plaintiffs note that the issues surrounding the warrantless entry "have been exhaustively addressed and litigated," and therefore they do not set forth any new substantive argument. Plaintiffs instead just state that "Plaintiffs recognize, however, that this Court is likely to grant the relief requested and therefore Plaintiffs are opposing this Motion to preserve their right to appeal because of the likelihood that the relief will be granted." ***Id. at 3.*** Plaintiffs have not shown why the motion should not be granted with respect to Morales. Accordingly, for the reasons set forth in the Court's prior Memorandum Opinion and Order (**Doc. 206**), the Court grants Defendants' motion for summary judgment on Count IV as to Morales.¹

CONCLUSION

For the reasons stated above, Defendants' motion for summary judgment on Counts IV, VI and VIII as to CYFD are denied as moot. The motion for summary judgment on Count IV as to Morales is granted.

¹ Plaintiffs' Amended Complaint does not include Miles in Count IV. Accordingly, the Court has granted the motion with respect to Morales only. *See Doc. 166 at 41 (Count IV).*

IT IS THEREFORE ORDERED that Defendants' Motion for Summary Judgment (Doc. 241), is **DENIED IN PART AS MOOT** as to Counts IV VI and VIII with respect to CYFD and **GRANTED IN PART** as to Count IV regarding Morales.

IT IS SO ORDERED.



KEA W. RIGGS
UNITED STATES DISTRICT JUDGE